

46 Am. Jur. 2d Judges § 213

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Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IX. Disqualification to Act in Particular Case

E. Effect of Disqualification

§ 213. Validity of official acts after disqualification of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  56

Generally, at common law, the acts of a disqualified judge are not void, but only voidable, and the disqualification does not deprive the judge of jurisdiction.¹

Whenever the disqualification of a judge under a statute is susceptible to waiver,² an act of a disqualified judge is voidable, but not void.³ On the other hand, if the disqualification is of a nature that cannot be waived, or is mandated by constitution or statute, then the judicial action affects jurisdiction and renders the proceeding a nullity,⁴ and the judge has no authority to act.⁵

Once disqualified by the filing of an affidavit for change of judge, the challenged judge has no jurisdiction to consider the propriety of the affidavit or to continue with the action.⁶

A judge who enters an order self-disqualifying is barred from further participation in the case,⁷ and any subsequent orders the judge enters in that case are void and have no effect,⁸ and are subject to collateral attack⁹ or may be set aside by an appellate court or resubmitted for consideration.¹⁰ A judge does not have power to compel a fellow judge to preside over a case after the latter has self-recused,¹¹ and absent the parties' agreement, it is improper for a judge to retain jurisdiction as to one issue in a case after self-disqualifying as to the balance of the case.¹²

A judge's attempt to transfer a case in which the judge is disqualified is void, as the determination of whether a transfer is warranted involves the exercise of discretion.¹³

A disqualified judge can issue an order denying a motion for a stay¹⁴ and can rule on a matter in a proceeding independent of the one for which the judge is disqualified.¹⁵

Once a judge is recused or disqualified from a case, the prudent approach is for the recused and assigned judges to have no further communication with each other concerning the case;¹⁶ however, a recused judge's opinion that a case should go to trial does not constitute an order under a rule prohibiting a recused judge from making any postrecusal orders without good cause.¹⁷

CUMULATIVE SUPPLEMENT

Cases:

Rescission of district judge's appointment to hear attorney-discipline case did not void actions taken by district judge prior to his rescission, where appointment was rescinded because district judge was no longer active judge and thus was ineligible to hear case, but district judge was not otherwise constitutionally or statutorily disqualified. *Tex. Const. art. 5, § 11*; *Tex. Gov't Code Ann. § 74.053(d)*, T. 2, Subt. G App. A-1, Disc. Proc., 3.02. *Crampton v. Commission for Lawyer Discipline*, 545 S.W.3d 593 (Tex. App. El Paso 2016), review denied, (Feb. 2, 2018) and cert. denied, 2018 WL 2160099 (U.S. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 *Sexton v. Barry*, 233 F.2d 220, 1 Ohio Op. 2d 231, 75 Ohio L. Abs. 71 (6th Cir. 1956).
As to validity of ministerial acts after disqualification, see § 212.
As to effect of disqualification in federal courts, see *Am. Jur. 2d, Federal Courts* § 45.
- 2 §§ 198 to 208.
- 3 *Wilson v. State*, 521 N.E.2d 363 (Ind. Ct. App. 1988).
- 4 *Espinosa v. State*, 115 S.W.3d 64 (Tex. App. San Antonio 2003).
- 5 *Davis v. Crist Industries, Inc.*, 98 S.W.3d 338 (Tex. App. Fort Worth 2003).
- 6 *State v. Johnson*, 2004 SD 135, 691 N.W.2d 319 (S.D. 2004).
Having recused oneself from a case, a judge has no more authority to take action in that case than does the ordinary citizen on the street. *Barnes v. Jefferson Davis County School Dist.*, 160 So. 3d 1149, 316 Ed. Law Rep. 1194 (Miss. 2015).
- 7 *Jenkins v. Motorola, Inc.*, 911 So. 2d 196 (Fla. 3d DCA 2005).
- 8 *Lance Block, P.A. v. Searcy, Denney, Scarola, Barnhart and Shipley, P. A.*, 85 So. 3d 1122 (Fla. 1st DCA 2012).
- 9 *Carr v. Duhme*, 167 Ind. 76, 78 N.E. 322 (1906).
- 10 *Johnson v. Sturdivant*, 295 Ark. 663B, 758 S.W.2d 415 (1988).
- 11 *Head v. Brown*, 259 Ga. App. 855, 578 S.E.2d 555 (2003).
- 12 *Southern Coatings, Inc. v. City of Tamarac*, 840 So. 2d 1109 (Fla. 4th DCA 2003).
- 13 *Reynolds v. Reynolds*, 163 S.W.3d 567 (Mo. Ct. App. E.D. 2005).
- 14 *Zullo v. Hom*, 10 A.D.3d 614, 781 N.Y.S.2d 677 (2d Dep't 2004).
- 15 *Thompson v. State*, 134 S.W.3d 168 (Tenn. 2004) (overruled on other grounds by, *State v. Irick*, 320 S.W.3d 284 (Tenn. 2010)).
- 16 *Mosley v. State*, 141 S.W.3d 816 (Tex. App. Texarkana 2004), petition for discretionary review refused, (Oct. 27, 2004).

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[Mosley v. State](#), 141 S.W.3d 816 (Tex. App. Texarkana 2004), petition for discretionary review refused, (Oct. 27, 2004).

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